

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico  
Filed 2/2/2023 8:46 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

**No. A-1-CA-40411**

5 **SIMON JUAN DE DIOS LOPEZ,**

6 Defendant-Appellant.

7 **APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO**  
8 **COUNTY**

9 **Jill M. Martinez, Metropolitan Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Ramon R. Romero

14 Albuquerque, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **IVES, Judge.**

18 {1} Defendant appeals his conviction for aggravated driving while under the  
19 influence. This Court issued a notice of proposed disposition, proposing to affirm.

20 Defendant filed a memorandum in opposition that we have duly considered.

21 Unpersuaded, we affirm.

1 {2} Defendant maintains that the trial court erred in refusing to admit the record  
2 of his medical examination—and specifically the results of his blood alcohol test—  
3 conducted by the Metropolitan Detention Center (MDC) as either substantive or  
4 impeachment evidence. [MIO 4-8] Even if we were to agree that the exclusion of  
5 this evidence was in error, such error would not be reversible error unless it was  
6 deemed to be sufficiently harmful. *See State v. Serna*, 2013-NMSC-033, ¶ 23, 305  
7 P.3d 936 (explaining that evidentiary error that does not implicate confrontation  
8 rights is reviewed for nonconstitutional harmless error). “[Non]constitutional error  
9 is harmless when there is no reasonable *probability* the error affected the verdict.”  
10 *State v. Tollardo*, 2012-NMSC-008, ¶ 36, 275 P.3d 110 (internal quotation marks  
11 and citation omitted). “[W]hen reviewing an error’s role in the trial, courts may,  
12 depending upon the circumstances of the cases before them, examine the importance  
13 of the erroneously [excluded evidence], as well as whether the error was cumulative  
14 or instead introduced new facts.” *Id.* ¶ 43 (alteration, internal quotation marks, and  
15 citation omitted).

16 {3} Here, Defendant contends that exclusion of this evidence was “extremely  
17 prejudicial” because it demonstrated (1) Defendant’s testimony was truthful  
18 regarding the number of alcoholic beverages he had consumed; and (2) the  
19 remainder of his testimony was credible. [MIO 5] As we pointed out in our notice  
20 of proposed disposition, it appears Defendant was permitted to testify as to the

1 results of the blood alcohol test taken at MDC. [CN 3] Thus, Defendant essentially  
2 argues in his memorandum in opposition that admission of the results would have  
3 bolstered his testimony. We do not believe that admission of this cumulative  
4 evidence is sufficient to establish that there is a reasonable *probability* that the  
5 verdict would have been different in this case. *See Tollardo*, 2012-NMSC-008, ¶ 36.  
6 Accordingly, Defendant has failed to demonstrate that the trial court committed  
7 reversible error. *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981  
8 P.2d 1211 (stating that we presume correctness in the trial court’s rulings and the  
9 burden is on the appellant to demonstrate trial court error).

10 {4} Finally, Defendant maintains that there was insufficient evidence to sustain  
11 his conviction. Defendant has not presented any new fact, law, or argument that  
12 persuades us we were incorrect in our proposed disposition. *See Hennessy v. Duryea*,  
13 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly  
14 held that, in summary calendar cases, the burden is on the party opposing the  
15 proposed disposition to clearly point out errors in fact or law.”); *State v. Mondragon*,  
16 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party  
17 responding to a summary calendar notice must come forward and specifically point  
18 out errors of law and fact, and the repetition of earlier arguments does not fulfill this  
19 requirement), *superseded by statute on other grounds as stated in State v. Harris*,  
20 2013-NMCA-031, ¶ 3, 297 P.3d 374.

1 {5} For the reasons stated in our notice of proposed disposition and herein, we  
2 affirm Defendant's conviction.

3 {6} **IT IS SO ORDERED.**

4   
5 \_\_\_\_\_  
**ZACHARY A. IVES, Judge**

6 **WE CONCUR:**

7   
8 \_\_\_\_\_  
**JENNIFER L. ATTREP, Chief Judge**

9   
10 \_\_\_\_\_  
**SHAMMARA H. HENDERSON, Judge**